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Crime prevention and criminal justice

Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets to the countries of origin

Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 59/242 of 22 December 2004 and reflects the responses received from 28 Member States on action taken in relation to the implementation of that resolution. It also includes information on recent international initiatives and a brief analysis of the impact of corruption in all its forms, including on the scale of transfers of assets of illicit origin and the impact of corruption and such outflows on economic growth and sustainable development.

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I. Introduction

1. In its resolution 59/242 of 22 December 2004, the General Assembly reiterated its invitation to all Member States and competent regional economic integration organizations to sign, ratify and fully implement the United Nations Convention against Corruption (Assembly resolution 58/4, annex) as soon as possible in order to ensure its rapid entry into force; encouraged all Governments to prevent, combat and penalize corruption in all its forms, including bribery, money-laundering and the transfer of illicitly acquired assets, and to work for the prompt return of such assets through asset recovery consistent with the principles of the Convention, particularly chapter V; encouraged subregional and regional cooperation, where appropriate, in the efforts to prevent and combat corrupt practices and the transfer of assets of illicit origin as well as for asset recovery consistent with the principles of the Convention; called for further international cooperation, inter alia, through the United Nations system, in support of national, subregional and regional efforts to prevent and combat corrupt practices and the transfer of assets of illicit origin, as well as for asset recovery consistent with the principles of the Convention; encouraged Member States to provide adequate financial and human resources to the United Nations Office on Drugs and Crime (UNODC), and further encouraged the Office to give high priority to technical cooperation, upon request, inter alia, to promote and facilitate the signing and ratification, acceptance, approval or accession and the implementation of the Convention, including the early finalization, in cooperation with the United Nations Interregional Crime and Justice Research Institute, of the legislative guide for the ratification and implementation of the Convention; reiterated its request to the international community to provide, inter alia, technical assistance to support national efforts to strengthen human and institutional capacity aimed at preventing and combating corrupt practices and the transfer of assets of illicit origin as well as for asset recovery consistent with the principles of the Convention, and formulating strategies for mainstreaming and promoting transparency and integrity in both the public and private sectors; encouraged Member States, relevant international organizations and UNODC to give prominence to 9 December as International Anti-Corruption Day, established by the Assembly in its resolution 58/4 of 31 October 2003; and requested the Secretary-General to submit to it at its sixtieth session a report on the implementation of the resolution and on the impact of corruption in all its forms, including on the scale of transfers of assets of illicit origin and the impact of corruption and such outflows on economic growth and sustainable development.

II. National measures

2. It may be recalled that, pursuant to General Assembly resolution 55/188 of 20 December 2000, a report on prevention of corrupt practices and illegal transfer of funds was submitted to it at its fifty-sixth session (A/56/403 and Add.1). That report summarized the responses provided by 29 countries and two bodies of the United Nations system, the United Nations Development Programme (UNDP) and the United Nations Conference on Trade and Development (UNCTAD). Many responses included copies of national legislation and recent legal reforms in the area, the status of ratification of relevant treaties and a description of international or regional initiatives. The report also provided an analytical overview and specific

recommendations concerning the return of illegally transferred funds to the countries of origin.

3. Further reports (A/57/158 and Add.1 and 2 and A/58/125) were submitted to the General Assembly at its fifty-seventh and fifty-eighth sessions in response to resolution 56/186 of 21 December 2001, reflecting the responses of 29 Member States providing information on progress made in the implementation of the resolution or updating replies that had appeared in the previous report. The topics covered in the responses included national anti-corruption programmes, domestic legislation and reform plans, institutional arrangements and relevant international legal instruments ratified. Considering that national legislation on the subject in many parts of the world was inadequate and the question of the transfer of funds of illicit origin and the return of such funds had not been specifically regulated by any of the existing treaties, the report concluded that the forthcoming convention against corruption could make a significant contribution.

4. A further report (A/59/203 and Add.1) was submitted to the General Assembly at its fifty-ninth session, in response to General Assembly resolution 58/205 of 23 December 2003, reflecting action taken by 18 Member States to implement the resolution.

5. Pursuant to resolution 59/242, the present report summarizes the responses received from the following Member States: Australia, Austria, Bolivia, Czech Republic, Egypt, El Salvador, Kuwait, Latvia, Mauritius, Morocco, Netherlands, Portugal, Republic of Korea, Serbia and Montenegro, Slovenia, Turkey, Ukraine and Venezuela (Bolivarian Republic of).

Australia

6. Australia reported that it was actively involved in international efforts to combat corruption and had ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD).[1] Australia was also a party to the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I). Australia was a signatory of the United Nations Convention against Corruption and was moving towards ratification of that Convention. Australia also supported various anti-corruption initiatives taken by key multilateral organizations, including the Asian Development Bank (ADB)/OECD Anti-Corruption Initiative for Asia-Pacific, the Asia-Pacific Economic Cooperation (APEC), the Asia-Pacific Secretariat of Transparency International, the World Bank and the World Bank Institute. In December 2004, the Government had announced the provision of 3 million Australian dollars over three years to support anti-corruption initiatives under APEC's Santiago Commitment to Fight Corruption and Ensure Transparency and the corresponding Course of Action. Australia had also provided legal assistance to the Pacific Islands Forum Secretariat in developing model laws on extradition, mutual legal assistance in criminal matters and money-laundering, including asset recovery. Australia also reported on the core funding it provided annually to UNODC in support of initiatives to combat corruption, as well as on the direct assistance given to the region of Asia and the Pacific.

7. Australia had taken extensive preventive measures and met all the mandatory obligations under chapter II of the Convention against Corruption. The following

measures had been taken: Commonwealth legislation (the Public Service Act of 1999, the Commonwealth Electoral Act of 1918, the Financial Management and Accountability Act of 1997, the Freedom of Information Act of 1982, the Corporations Act of 2001 and the Proceeds of Crime Act of 2002); involvement of Australian government bodies, including the Australian Federal Police (AFP), the Australian Crime Commission (ACC), the Australian Securities and Investments Commission, the Australia Public Service Commission and the Australian Transactions and Reporting Centre; the provision of procedural safeguards (for example, the auditing of government agencies by the Australian National Audit Office and the issuance of public budget statements); and promotion of self-regulation (for instance, the voluntary Corporate Governance Guidelines of the Australian Stock Exchange) and strengthening of cooperation with regional and international authorities.

8. Australia also provided a number of institutional safeguards to properly manage public affairs and public property, as well as to foster a culture of transparency, accountability and rejection of corruption in the public sector, the judiciary and the prosecution services. In the public sector, the Australian Public Service (APS) was regulated by the Public Service Act of 1999, consisting of the APS Code of Conduct and the APS Values, and the Australian Public Service Commission ensured that the Service was performing consistently with the APS Values. The Commonwealth Electoral Act of 1918 regulated elected officials. With regard to the judiciary, Australia reported that judicial independence was a fundamental principle of its Constitution. As far as prosecution services were concerned, the Commonwealth Director of Public Prosecutions had been established under the Director of Public Prosecutions Act of 1983 and all decisions were made by the Director in accordance with the guidelines laid down in the Commonwealth Prosecution Policy. With regard to public property, the Government had established systems for the management and accountability of public money through the Financial Management and Accountability Act of 1997, the Financial Management and Accountability Regulations of 1997 and the Commonwealth Authorities and Companies Act of 1997. All Commonwealth agencies were audited by the Australian National Audit Office.

9. There were various bodies that helped to prevent, investigate and prosecute corruption, such as the ombudsmen in each Australian jurisdiction, AFP and ACC, the Australian Taxation Office, the Australian Competition and Consumer Commission, the Australian Securities and Investment Commission and the Australian Public Service Commission. Furthermore, Australia was drafting legislation for the establishment of an independent federal anti-corruption body, to be called the Australian Commission for Law Enforcement Integrity, in accordance with a proposal approved by the Government at the end of 2004. The legislation would most probably be introduced into Parliament in mid-2005.

10. Australia reported that it also counted on a strong legislative regime to criminalize corrupt behaviours, including bribery and foreign bribery offences and money-laundering offences in the Criminal Code Act of 1995; various offences for improperly dealing with public money under the Financial Management and Accountability Act of 1997; and provisions regulating the duties of directors in the Corporations Act of 2001. Moreover, Australia had a strong corporate and financial services regulatory regime. Corporations and financial institutions were regulated

through legislation such as the Corporations Act of 2001, the Australian Securities and Investments Commission Act of 2001, the Australian Prudential Regulation Authority Act of 1998 and the Financial Transaction Reports Act of 1988. The Australian Securities and Investments Commission was an independent government body that was specifically responsible for enforcing corporate and financial services laws.

11. With a view to supporting the prompt return of illicitly acquired assets, the Proceeds of Crime Act of 2002 provided a scheme to trace, restrain and confiscate the proceeds of crime. Under the Act, any person, including a foreign State, could initiate civil proceedings in Australian courts when the offence fell within Australia's jurisdiction. The Act also established an "equitable sharing programme", which provided for discretionary ministerial authority in relation to the return of proceeds of crime to a foreign State, which might then use that money to pay compensation to its victims. The Mutual Assistance in Criminal Matters Act of 1987 had established procedures for Australia to assist foreign States to deprive persons of the proceeds of crime that were reasonably suspected of being in Australia. The Act also provided mechanisms to register and enforce foreign forfeiture orders, to obtain restraining orders and to obtain production and monitoring orders.

12. The Australian Financial Intelligence Unit (AUSTRAC) played a key role in tracing proceeds of crime. Banks and financial institutions had obligations to report suspect transactions and significant cash transactions to AUSTRAC, which shared the collected information with specialized law enforcement, security and revenue agencies within Australia, as well as with overseas authorities, subject to appropriate safeguards on confidentiality and use. Australia's mutual assistance agreements further facilitated cooperation with overseas agencies.

13. Australia was reportedly also considering ways to give prominence to the observance of the International Anti-Corruption Day.

Austria

14. Austria reported that it had signed the United Nations Convention against Corruption during the High-level Political Signing Conference held in Merida, Mexico, in December 2003. The Government was currently preparing the ratification process, which should be completed in 2005. Upon ratification, Austria would be able to return assets of illicit origin on the basis of the provisions of the Convention.

Bolivia

15. Article 185 bis of the Bolivian Penal Code explicitly indicated that predicate offences for money-laundering included offences committed by government officials in the exercise of their duties. In accordance with article 185 ter, the Bolivian Financial Intelligence Unit had been established and was responsible for receiving, requesting, analysing and, as appropriate, transmitting to the competent authorities relevant information for criminal investigations and prosecutions. The Unit could also investigate the transfer of illicitly acquired assets by public officials. To date the Unit had pursued 59 cases related to corruption by public officials, 29 of which had been sent to the competent judicial authority. With a view to coordinating anti-corruption activities at the domestic level, the Unit had cooperated with other

anti-corruption bodies, including the Comptroller-General of the Republic and the Office of the Prosecutor-General. In addition, the Unit had signed memoranda of understanding with the financial intelligence units of 15 countries with a view to promoting information exchange on money-laundering.

Czech Republic

16. In its reply, the Czech Republic updated the information provided in an addendum to the report of the Secretary-General of 2 July 2002 (A/57/158/Add.1). During the period under review, the Government had signed the United Nations Convention against Corruption on 22 April 2005.

17. The Government Programme for the Fight against Corruption provided a time-bound and comprehensive set of measures against corruption. The Government reviewed the implementation of the Programme annually and had established an interministerial commission to facilitate exchange of information among ministries to further coordinate implementation of the Programme.

18. On the occasion of the first International Anti-Corruption Day, on 9 December 2004, the Interministerial Coordinating Group for the Fight against Corruption had organized a lecture on measures and procedures preventing corruption. The Ministry of the Interior had also launched a new anti-corruption website (www.korupce.cz), which contained information on various anti-corruption issues, including an electronic mail (e-mail) address where corrupt conduct could be reported.

Egypt

19. The Government of Egypt ratified the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption on 5 March 2004 and 25 February 2005, respectively. The Conventions, upon ratification, had become Egyptian national legislation, in accordance with article 151 of the Egyptian Permanent Constitution of 1991. The Ministry of Justice played a leading role in implementing the provisions of the instruments as well as in their dissemination to the public sector.

20. It was reported that Egyptian national legislation covered various types of corruption, including money-laundering. Articles 103-119 bis of its Penal Code established the offences of corruption and embezzlement and also provided for severe penalties for those offences. The issues of money-laundering were addressed in Law 80 of 2003, Prime Minister's Decree 951 of 2003 and Presidential Decree 164 of 2002, which authorized the competent authorities to trace and confiscate the proceeds of crime.

El Salvador

21. It was reported that El Salvador had ratified the United Nations Convention against Corruption and that its criminal law covered different forms of corruption, including bribery and money-laundering.

22. In addition to the information contained in an addendum to the report of the Secretary-General of 30 July 2004 (A/59/203/Add.1), the Government provided updated information on the request of El Salvador to freeze funds in Panama on the suspicion that those funds were derived from acts of corruption in El Salvador. The

prompt and efficient cooperation of the Government of Panama allowed the tracing and freezing of bank accounts in Panama, involving persons both on trial and judged, and was based on special cooperation arrangements concluded with Panama.

23. It was suggested that areas such as technical assistance, information exchange and preventive measures should be addressed in greater depth in order to achieve an optimum level of consistency between the provisions of the Convention and those of Salvadorian law.

Kuwait

24. Kuwait signed the United Nations Convention against Corruption on 9 December 2003 and was reportedly working towards ratification by bringing its national legislation into compliance with the provisions of the Convention. Progress had been made with regard to asset recovery, in particular by the issuance of Decree Law 35/2002 on combating money-laundering. Consequently, the Kuwaiti financial intelligence unit, the National Commission on Combating Money-Laundering and Financing Terrorism, had been established within the Central Bank of Kuwait and a number of decisions had been issued by the Bank to prevent and combat money-laundering.

Latvia

25. Extensive information was provided by Latvia in connection with activities of the Corruption Prevention and Combating Bureau (CPCB), which was reported as being responsible for the prevention and investigation of corruption, public awareness-raising, as well as for the coordination of the implementation of anti-corruption measures in state and local government institutions.

26. During 2004, CPCB initiatives to combat corruption had included the investigation of corruption cases, the examination of conflicts of interest of public officials and the scrutiny of financing of political parties. Furthermore, the Bureau has drafted a number of amendments to existing legislation in order to strengthen its capacity to prevent and combat corruption. Amendments to the Law on the Financing of Political Parties had been adopted by the Parliament in February 2004 to make the process of political party financing more transparent.

27. In 2004, the Government had adopted the National Strategy and National Programme for Corruption Prevention and Combating for 2004-2008. CPCB was responsible for monitoring and coordinating the implementation of the Programme and reported to the Cabinet of Ministers.

28. The Programme contained a number of measures against money-laundering, such as the identification of illicitly acquired funds; more effective measures against money-laundering; improved regulation of activities of off-shore companies; and better coordination between CPCB and other authorities, including the Office for the Prevention of Laundering of Proceeds Derived from Criminal Activities of the Prosecutor General's Office, the Finance Police and the Economic Police. The measures to combat money-laundering would be implemented by the Office for the Prevention of Laundering of Proceeds Derived from Criminal Activities of the Prosecutor General's Office in close cooperation with the State Revenue Service.

29. A working group had been established to draft a concept on improvement of income control of individuals, which contained several recommendations to improve the efficiency of the income control system, as well as to detect the proceeds of crime.

30. In its response, the Government of Latvia emphasized its commitment to activities to combat corruption at the international and regional levels and reported that it had ratified the following international and regional instruments against corruption: the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union;[2] the Protocol Convention on the Protection of the European Communities' Financial Interests[3] and the Second Protocol thereto;[4] the Civil Law Convention on Corruption;[5] the Cooperation Agreement between the Republic of Latvia and European Police Office (Europol); the Convention on the Establishment of a European Police Office (Europol Convention);[6] and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union[7] and the Second Additional Protocol thereto.[8]

31. Since July 2002, Latvia had been a member of the Group of States against Corruption (GRECO) and had been actively involved in the evaluation procedures in the Group. The Government indicated its intention to sign the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and that it had engaged in dialogue with the OECD Investment Committee and the Multinational Enterprises Working Group on Bribery in International Business Transactions.

32. Latvia also reported that representatives of the Latvian business community had participated in the Global Compact Leaders Summit, held in New York in June 2004, and that a number of Latvian private business entities had joined the Global Compact.

33. On 9 December 2004, a number of activities commemorated the first International Anti-Corruption Day in Latvia, including a press conference to inform about the achievements of CPCB in the fight against corruption, a presentation on the implementation of the National Corruption Prevention Programme for 2004-2008 and the launch of the UNODC public service announcement campaign at the Supreme Court.

Mauritius

34. Mauritius indicated that its Dangerous Drugs Act of 2000 and Financial Intelligence and Anti-Money-Laundering Act of 2002 were already addressing the transfer of assets of illicit origin. The Independent Commission against Corruption and the Financial Intelligence Unit had been established to combat such offences and to enforce the relevant laws.

Morocco

35. Morocco reported that a new law on the criminalization of money-laundering and on the establishment of a national authority to coordinate the activities of agencies involved in monitoring and tracing suspicious transactions was being drafted and was expected to be finalized shortly.

Netherlands

36. The legal system in the Netherlands reportedly provided for adequate supervision of financial institutions, as well as those involved in financial transactions, such as notaries, lawyers and car dealers, and required them to report unusual financial transactions. It also provided for codes of conduct for public officials and other relevant professional groups and for transparency in the funding of political parties. A business code for chief executive officers had been adopted by multinational business organizations on a voluntary basis.

37. The Netherlands also reported on its contributions in support of UNODC activities against corruption.

Portugal

38. Portugal updated the information contained in the addendum to the report of the Secretary-General of 30 July 2004 (A/59/203/Add.1). During the period under review, the Government had started the process of ratification of the United Nations Convention against Corruption in order to bring its domestic law into compliance with the provisions of the Convention, in particular chapter V. In that respect, amendments had been made to a number of provisions of the Penal Code, including article 372, on passive corruption with the intent to commit an unlawful act, article 373, on passive corruption with the intent to commit a lawful act, article 374, on active corruption, and article 381, on the definition of the term "official". The penalties for committing those offences had been made more severe.

39. The use of undercover operations was provided for by Law 101/2001, which was applicable to the following offences: corruption, trading in influence, money-laundering and laundering of other assets. Law 5/2002 was recently adopted to enable the authorities to collect evidence, lift a client's privileges and confiscate property in connection with the offences of corruption and money-laundering.

40. With regard to the prevention of corruption, the criminal police had disseminated guidelines on conflicts of interest to public officials and members of the public administration.

41. Law 144/99 provided for various forms of international judicial cooperation, including extradition, transfer of criminal proceedings and mutual legal assistance. Portugal based its international cooperation upon that Law and relevant treaties.

42. While the legislation in place did not have any specific rules enabling the return of illicit funds to the countries of origin, articles 109-111 of the Penal Code and article 178 of the Code of Criminal Procedure allowed, without prejudice to the rights of bona fide third parties, the confiscation of property or other proceeds of crime for the benefit of the Portuguese State through a final court decision. In addition, a new special system of confiscation had been established in 2001, shifting the burden of proof in part to the defendant and allowing the defendant's property to be confiscated unless he or she proved the lawful origin of the property.

43. The Portuguese authorities could execute a confiscation order by a foreign court and transfer confiscated property, including the proceeds of corruption offences and laundering offences, to a requesting State, provided that the following conditions were met: the requests were made by the competent foreign authorities;

the Government had a particular interest in returning the confiscated proceeds of crime; and reciprocity was guaranteed.

44. The Government was reported to be providing technical assistance to facilitate the ratification process of the United Nations Convention against Corruption. The Ministry of Justice had translated the text of the Convention into Portuguese and had disseminated it widely to Portuguese-speaking countries. Furthermore, in 2003 and 2004 the Ministry of Justice and UNODC had organized two study tours for criminal justice officials of Portuguese-speaking developing countries aimed at assisting them with the drafting of the implementation legislation.

Republic of Korea

45. On 9 March 2005, the President of the Republic of Korea and representatives of the public, political, private and civilian sectors signed the Korean Social Pact on Anti-Corruption and Transparency, in which all signatories made commitments to fight corruption in their respective sector. With a view to monitoring and assessing the implementation of the Pact, the Council for the Pact had been established on 7 April 2005. Furthermore, the Korea Independent Commission Against Corruption had been carrying out comprehensive anti-corruption plans since June 2004.

46. At the international level, the Republic of Korea was intending to host two global conferences in 2005: the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Symposium on 1 and 2 September and the first APEC Anti-Corruption and Transparency Task Force Meeting on 5 and 6 September. It was also reported that the Korea Independent Commission Against Corruption had provided technical assistance to Indonesia and Viet Nam in 2004.

Serbia and Montenegro

47. It was reported that the Ministry of the Interior of Serbia and Montenegro had designed a programme proposal for combating organized crime and corruption, which had been submitted to the Government for adoption.

48. The Act on Preventing Money-Laundering established a normative framework against money-laundering, including the control of financial transactions. The Act also included regulatory measures over banks and non-bank financial institutions in compliance with relevant international instruments. An independent agency in charge of preventing money-laundering had been established and had signed an agreement on cooperation with the Ministry of the Interior in 2004.

Slovenia

49. The Government of Slovenia indicated in its response that signature and ratification of the United Nations Convention against Corruption constituted one of its priorities for 2005, emphasizing that it had not yet signed the Convention because of logistical problems.

50. In 2004, Slovenia had amended its criminal legislation to combat corruption, ensuring that all mandatory offences of the Convention were covered by the Slovenian Criminal Code. The Slovenian legislation to combat money-laundering covered both "self-laundering" and the perpetration of the offence by negligence ("should have known" standards). In the same year, the Commission for the

Prevention of Corruption had been established as an independent preventive body responsible for the implementation of the national strategy to combat corruption; the introduction of integrity plans in the public sector; and the monitoring of financial assets and conflicts of interests of Slovenian public functionaries. The Commission was already fully functional and had collected the first set of reports on financial assets, prepared the guidelines for integrity plans and drafted an action plan for the implementation of the national strategy to combat corruption. Furthermore, the Commission had established close cooperation with similar bodies in other European countries and had signed a memorandum of understanding with the Office of Government Ethics of the United States of America.

51. The Law on Public Officials of 2002 was intended to promote fair, transparent and responsible public management in Slovenia.

52. Through the Chamber of Commerce, the Slovenian private sector was actively involved in activities to combat corruption, including in the drafting of the national strategy and codes of conduct for the private sector. Cooperation between the public and private sectors had also been strengthened.

53. With a view to limiting to the maximum extent possible the ability to place illicit funds in its financial institutions, Slovenia has developed a modern system of due diligence and vigilance programmes for financial institutions in compliance with relevant European Union directives.

54. Finally, efforts have been made to make the public and the media aware of International Anti-Corruption Day.

Turkey

55. Turkey updated the information contained in the report of the Secretary-General of 30 July 2004 (A/59/203). It reported that, while the domestic proceedings for the ratification of the United Nations Convention against Corruption were still under way, the offences established in the Convention were already covered by Turkish law. The new Penal Code provided for measures to confiscate the proceeds of crime (art. 55), in addition to the confiscation of property (art. 54), which had already been provided for in the previous Penal Code. Similarly, the new Code of Criminal Procedures allowed the seizure of such proceeds and property (art. 123), as well as other interests, such as immovable property, rights and secured credits (art. 128). The Code also allowed the competent authorities to use controlled delivery and other special investigative techniques, including intercepting and recording communications. The new Penal Code and the new Code of Criminal Procedures had entered into force on 1 June 2005. Along with those new developments, the Government of Turkey ensured that the right to access information was guaranteed by the Law on the Right to Access Information (No. 4982), emphasizing the importance of the principles of equality, impartiality and openness as prerequisites for democratic and transparent administration in Turkey.

56. A bill designating 9 December Anti-Corruption Day had been introduced in Parliament and was expected to be adopted soon.

Ukraine

57. The Government of Ukraine reported that it was taking steps to combat corruption. In order to strengthen existing measures to combat corruption, a revised act and supplementary acts had been drafted and would be submitted shortly to the Verkhovna Rada for consideration. The revised act sought a uniform approach in the fight against various forms of corruption.

58. The Government of Ukraine had approved a programme of comprehensive measures to combat the illicit transfer of funds from Ukraine and to return them to the countries of origin. The programme also provided for effective measures to prevent the Ukrainian financial institutions from being used to launder the proceeds of crime. The Cabinet of Ministers had set a provisional time frame for the implementation of the recommendations of the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures of the Council of Europe and the drafting of legislation on sharing confiscated proceeds of crime.

59. A national investigative bureau would soon be established as the main state body responsible for combating corruption in the higher authorities.

60. The Government of Ukraine had signed the United Nations Convention against Corruption and the Criminal Law Convention on Corruption[9] and the Civil Law Convention on Corruption of the Council of Europe. On 16 March 2005, the Verkhovna Rada had adopted the Act Ratifying the Civil Law Convention on Corruption. Acts ratifying the United Nations Convention against Corruption and the Criminal Law Convention on Corruption would soon be submitted to the Verkhovna Rada.

Venezuela (Bolivarian Republic of)

61. With a view to combating corruption and the transfer of funds of illicit origin, the Government had reportedly adopted a series of legislative and administrative measures, including the establishment of the National Financial Intelligence Unit (UNIF) and the enactment of the Anti-Corruption Act.

62. UNIF was the central national agency responsible for collecting information on money-laundering and the financing of terrorism for the entire Venezuelan financial system, as well as for analysing collected information and forwarding it to relevant authorities, such as the Department of Public Prosecution. UNIF performed the following functions: drafting regulations for preventing and combating money-laundering and the financing of terrorism; assisting reporting parties in complying with the regulations; receiving periodic electronic reports from reporting parties and analysing them; receiving and analysing reports on suspicious transactions from reporting parties and forwarding them to the Department of Public Prosecution to assist judicial investigations in cases where there was sufficient financial evidence; acting as liaison between the judicial authorities and reporting parties; exchanging information with foreign financial intelligence units; and promoting and participating in training on the prevention of money-laundering and the financing of terrorism.

63. The Anti-Corruption Act of 7 April 2003 aimed at regulating the conduct of public officials and other relevant persons in order to safeguard public assets and to ensure proper management of public property in accordance with the principles of

integrity, transparency, commitment, efficiency, effectiveness, propriety, accountability and responsibility. The Act also established offences against the public interest, such as embezzlement (arts. 52 and 53), misappropriation of funds (arts. 56 and 59), extortion (art. 60), corruption (arts. 61 and 62), illicit acquisition of profit (art. 72), misuse of public funds (art. 74) and obstruction of justice (arts. 83-86). The Act further established the offence of illicit enrichment of public officials. Furthermore, any person subject to the Act was required to submit a declaration of his or her assets upon appointment and separation from the public function. The Department of Public Prosecution and the criminal courts could request the submission of such a declaration in the course of investigation of offences established by the Act.

64. In addition, the Office of the Comptroller-General and the Department of Public Prosecution played active roles in combating corruption. The functions of the Office of the Comptroller-General included requesting declarations of assets by persons in accordance with the law; receiving and keeping those declarations of assets; undertaking investigations of all activities directly involving public assets in accordance with the Organization Act concerning the Office of the Comptroller-General and the National System of Fiscal Control, as well as other types of investigation mandated by the relevant laws; and forwarding the results of its investigations and other relevant documents to the Prosecutor-General or to the competent courts. In the fight against corruption, the Department of Public Prosecution had the following duties: instituting appropriate proceedings with a view to establishing criminal, civil or administrative liability of persons; requesting the criminal investigation authorities to carry out supplementary operations to collect further evidence; informing the Office of the Comptroller-General of the results of proceedings; gathering evidence considered necessary for the prosecution of persons committing any offences established by the law; taking steps to ensure the implementation of administrative or disciplinary penalties; and bringing civil actions to collect unpaid administrative fines imposed by the Office of the Comptroller-General as a result of administrative liability.

III. International initiatives

A. Legislative guide for the United Nations Convention against Corruption

65. In order to assist States in the ratification and implementation process by identifying legislative requirements, issues arising from those requirements and options available to States in developing and drafting the necessary legislation, the UNODC, in close cooperation with the United Nations Interregional Crime and Justice Research Institute, is finalizing a legislative guide for the ratification and implementation of the United Nations Convention against Corruption.

66. The guide has been developed through a fully participatory process with the active involvement of a group of experts from all regions, following the methodology used for the development of the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*.[10] A second expert meeting was held from 26 to 28 February 2005. Based on the comments of the experts, a first draft text of the

legislative guide was circulated to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005, and to the Commission on Crime Prevention and Criminal Justice at its fourteenth session, held in Vienna from 23 to 27 May 2005, for suggestions and comment.

67. Taking into account the feedback received, the text is expected to be finalized by the end of 2005. Like the *Legislative Guides* for the Organized Crime Convention and its Protocols, the legislative guide for the United Nations Convention against Corruption will be distributed primarily on CD-ROM and made accessible on the website of UNODC, while a limited number of hard copies will also be produced. Every effort will be made to make the legislative guide available in all official languages to the Conference of the States Parties to the Convention at its first session.

B. Commonwealth working group on asset repatriation

68. In the Aso Rock Commonwealth Declaration on Development and Democracy: Partnership for Peace and Prosperity, adopted at the summit in Abuja in December 2003, the Commonwealth heads of Government urged the early signature, ratification and implementation of the United Nations Convention against Corruption by its 53 member States. They also pledged maximum cooperation and assistance among their Governments to recover assets of illicit origin and return them to their countries of origin. To that end, a Commonwealth working group on asset repatriation was established to examine the issue of the recovery of assets of illicit origin and return of those assets to the countries of origin, focusing on maximizing cooperation and assistance between Governments, as well as to prepare a report with specific recommendations for the advancement of effective action in that area. UNODC was invited to participate as an observer in the meetings of the group.

69. The working group held four meetings between June 2004 and July 2005. It examined a broad range of issues related to asset repatriation, considering them in the chronological order of a case. Issues discussed have included the misappropriation of assets, immunities, non-conviction-based asset confiscation, movement of funds, tracing and trafficking of assets, mutual assistance, restraint, confiscation and return of assets. The group also considered the Harare Scheme, a scheme on mutual assistance applicable to Commonwealth countries. The group has made a number of recommendations to advance effective action in asset repatriation. The report and recommendations of the group will now be submitted for comment to the ministers of finance and justice of the Commonwealth countries and will then be presented at the Commonwealth Summit of Heads of Government, to be held in Malta in November 2005.

IV. Impact of corruption

70. The preamble to the United Nations Convention against Corruption indicates that corruption inflicts grievous harm on States in several ways, while the multidimensional impact of corruption was reaffirmed by the High-level Political

Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, from 9 to 11 December 2003.

71. The following brief analysis of the impact of corruption in the areas of concern recognized in the Convention, including the scale of transfers of assets of illicit origin, is submitted pursuant to paragraph 15 of General Assembly resolution 59/242.

A. Impact on stability and security

72. Although few attempts have been made to measure the security cost of corruption, it is widely recognized that corruption itself poses a direct security threat by fuelling conflict, while also facilitating other types of crime, in particular organized crime, which constitutes another security threat to the international community (see the report of the High-level Panel on Threats, Challenges and Change, entitled "A more secure world: our shared responsibility" (A/59/565 and Corr.1)).

73. Despite the difficulties in undertaking empirical research in the area of peace and security, the World Bank Institute recently published an article examining an empirical link between governance and security issues in which it was noted that the quality of domestic institutions, including the control of corruption, was strongly linked to organized and other crime.[11] The study concluded that, contrary to common misconception, an empirical analysis of security aspects of governance would be feasible and further study would provide well-guided policy advice.

B. Impact on institutions and the rule of law

74. The close link between the rule of law and corruption has been reaffirmed in several political declarations, including the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,[12] adopted by the Eleventh United Nations Crime Congress on Crime Prevention and Criminal Justice. Furthermore, it has been suggested[13] that countries with more corruption experience lower acceptance of established institutions, weakened political institutions and a deficient court system. Emphasizing that institutions weakened by corruption generate further opportunities for corruption, the authors also suggested that the relationship between the rule of law and corruption was intertwined and that further research was needed.

C. Impact on sustainable development and economic growth

75. It is widely recognized—and indeed verified by a number of studies—that corruption poses a severe threat to sustainable development in its various aspects.

76. With a view to measuring the economic cost of corruption in various aspects, the International Monetary Fund (IMF) has conducted several empirical studies. In a paper published in 1997,[14] IMF classified the economic impact of corruption into the following aspects: (a) lowering investment and retarding economic growth to a significant extent; (b) misallocating talents; (c) reducing the effectiveness of aid flows; (d) bringing about loss of tax revenue; (e) leading to adverse budgetary

consequences; (f) lowering the quality of infrastructure and public services; and (g) distorting the composition of government expenditure.

77. In connection with the impact of corruption on investment, one study notes that a country with widespread corruption is likely to achieve aggregate investment levels of almost 5 per cent less than a country relatively free of corruption and to lose about half a percentage point of gross domestic product growth per year.[15]

78. Recent research by the World Bank Institute on the developmental cost of corruption indicates that countries that improve control of corruption and the rule of law can expect, on average and in the long run, a four-fold increase in income per capita.[16]

79. It should be noted that corruption affects income growth rates. There seems to be a significant difference (2-4 per cent) in annual income growth rates between countries with a different level of corruption control.[16]

80. The impact of corruption on poverty and inequality has been pointed out in numerous studies.[17] It should be recalled that corruption affects the poor most severely and that such disproportional effects are confirmed by the results of extensive research by the World Bank Institute (see A/59/77).

D. Scale of transfers of assets of illicit origin

81. While it is impossible to measure precisely the full extent of the transfers of illicit assets owing to the nature of such activities, there can be little doubt that corruption and the laundering of proceeds derived from corruption have a cancerous effect on economies and politics around the globe. IMF has estimated that the total amount of money laundered on an annual basis is equivalent to 3-5 per cent of the world's gross domestic product (GDP), an amount of between $600 billion and $1.8 trillion. It would be safe to assume that a significant portion of that activity involved funds derived from corruption. A report published in March 2005 entitled *Our Common Interest: Report of the Commission for Africa* also notes that stolen African assets equivalent to more than half of the continent's external debt are held in foreign bank accounts.

E. Methodological challenges

82. Despite the fact that the multidimensional impact of corruption is widely recognized, efforts to measure its actual costs are methodologically difficult because of a number of factors, including, in particular, discrepancies in understanding and interpreting the term "corruption", as well as in how it is criminalized. It is thus difficult to evaluate its impact, as corrupt behaviours and practices may be understood more or less broadly depending on national exigencies or traditions.

83. The Fourth Global Forum on Fighting Corruption, held in Brasilia from 7 to 10 June 2005, included a workshop on issues of measuring corruption. During the discussion, a number of developments in measuring the cost of corruption were highlighted and it was also pointed out that there were many issues that still needed to be addressed, including over-reliance on perception-based corruption indicators; the weak empirical foundation of many aspects of corruption research; the

cumbersome and costly approaches needed to obtain more reliable data on corruption; and ad hoc methodologies for measuring corruption.

V. Conclusions and recommendations

84. **Given that the United Nations Convention against Corruption offers a wide range of opportunities for prevention of corruption and asset recovery, it is crucial to ensure that the Convention receives the necessary number of ratifications for its entry into force and becomes fully functional. As at 22 July 2005, 29 instruments of ratification had been deposited. The Convention will enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the effective implementation of the Convention, it will also be essential for the Conference of the States Parties, which will be convened within one year of the entry into force of the Convention, to be able to count on a large number of ratifications or accessions by States from all regions of the world.**

85. **In view of the above, the General Assembly may wish to invite Member States to renew their efforts to ratify and subsequently implement the Convention and to encourage them to make adequate contributions to UNODC to make possible the provision of assistance to requesting States, to support the efforts of developing countries and countries with economies in transition to prevent and fight corruption effectively and to help them implement the Convention successfully, in pursuance of article 62.**

86. **The General Assembly may also wish to consider issues related to the limited resources allocated to the promotion of the effective implementation of the Convention, whose entry into force will generate a significant increase in the volume of work of UNODC, in particular in connection with the reconvening of the Ad Hoc Committee for the Negotiation of a Convention against Corruption in order to prepare the draft rules of procedure, in accordance with paragraph 5 of Assembly resolution 58/4. In addition, UNODC will have to convene the first session of the Conference of the States Parties, in accordance with article 63, for which the Office will provide secretariat services, pursuant to article 64. Accordingly, the Assembly may wish to review the resources required to carry out the mandates of the Office regarding the implementation of the Convention in order to ensure its capacity to work effectively in the months and years ahead and to facilitate the functioning of the Conference of the States Parties.**

Notes

[1] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[2] *Official Journal of the European Communities*, C 195, 25 June 1997.

[3] Ibid., C 313, 23 October 1996.

[4] Ibid., C 221, 19 July 1997.

[5] Council of Europe, *European Treaty Series*, No. 174.

[6] Ibid., C 316, 27 November 1995.

[7] Ibid., C 197, 12 July 2000.

[8] Council of Europe, *European Treaty Series*, No. 182.

[9] Ibid., No. 173.

[10] United Nations publication, Sales No. E.05.V.2.

[11] Daniel Kaufmann, "Corruption, governance and security: challenges for the rich countries and the world", Michael E. Porter and others, *The Global Competitiveness Report 2004/2005* (Geneva, Palgrave Macmillan, 2004).

[12] See the report of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (A/CONF.203/18), chap. I, resolution 1.

[13] Thomas Herzfeld and Christoph R. Weiss, "Corruption and legal (in)effectiveness: an empirical investigation", *European Journal of Political Economy*, vol. 19, No. 3 (2003), pp. 621 and 632.

[14] Paolo Mauro, *Why Worry about Corruption?*, Economic Issues No. 1 (Washington, D.C., International Monetary Fund, 1997).

[15] Rick Stapenhurst and Sahr Kpundeh, eds., *Curbing Corruption: Toward a Model for Building National Integrity*, EDI Development Studies (Washington, D.C., World Bank, Economic Development Institute, 1999).

[16] "Six questions on the cost of corruption with World Bank Institute Global Governance Director Daniel Kaufmann", Washington, D.C., World Bank, Feature story, 2005, available at: http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190295~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html.

[17] Sanjeev Gupta, Hamid R. Davoodi and Rosa Alsonso-Terme, "Does corruption affect income inequality and poverty?", *Governance, Corruption, and Economic Performance*, George T. Abed and Sanjeev Gupta, eds. (Washington, D.C., International Monetary Fund, 2002), pp. 458-486; Raul A. Barreto, "Endogenous corruption, inequality and growth: econometric evidence", Adelaide University Working paper series, No. 01-2, Adelaide, Australia, 2001; and Kwabena Gyimah-Brempong, "Corruption, economic growth, and income inequality in Africa", *Economics of Governance*, vol. 3, No. 3 (2002), pp. 183-209.